

REMARKS

This responds to the Office Action dated January 31, 2005.

Claims 19, 27, 31, and 35 are amended. No claims are cancelled or added. As a result, claims 1-38 remain pending in this application.

§102 Rejection of the Claims

Claims 35, 36 and 38 were rejected under 35 U.S.C. § 102(b) for anticipation by Spinelli et al. (U.S. Publication No. 2003/0088290A1). As an initial note, Spinelli et al. did not publish until May 8, 2003, which is after Applicant's January 8, 2002 filing date of the present patent application. Therefore, Applicant respectfully submits that Spinelli et al. is only available as a reference, if at all, under 35 U.S.C. § 102(e), and Applicant reserves the right to swear behind Spinelli et al. as provided under 37 C.F.R. § 1.131. Nevertheless, Applicant respectfully submits that the present amendment to claim 35 overcomes this basis of rejection of these claims. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection of these claims.

§103 Rejection of the Claims

Claims 19-34 were rejected under 35 U.S.C. § 103(a) for obviousness over Thompson et al. (U.S. Patent No. 4,556,063) in view of Stein (U.S. Patent No. 4,266,551). Applicant had previously pointed out that the cited portions of Thompson et al. apparently do not disclose, teach, or suggest "another" intermediary transceiver. However, the Office Action noted that "another" (i.e., intermediary) transceiver was not apparently positively recited in the claims. Accordingly, Applicant has adopted the Examiner's suggestion, and has amended the claims to recite or incorporate an intermediary transceiver that is separate from the external remote RF-transceiver. Therefore, these claims are believed to now be allowable, since no *prima facie* case of obviousness presently exists with respect to these claims.

Claim 37 was rejected under 35 U.S.C. § 103(a) for obviousness over Spinelli et al. (U.S. Publication No. 2003/0088290A1) in view of Spiess (U.S. Patent No. 5,592,512). Applicant respectfully traverses.

Applicant's traversal is made on the grounds that Spinelli et al. is disqualified by the American Inventors Protection Act (AIPA) of 1999 from being used as a reference against the present patent application under 35 U.S.C. § 102(e)/103. Applicant declares that, to the best of Applicant's knowledge, at the time the present invention was made, the present patent application and the Spinelli et al. U.S. Patent Application No. 10/008,354 were owned by the same entity, that is, Cardiac Pacemakers, Inc. The Spinelli et al. patent application was apparently filed on Nov. 7, 2001, and did not publish until May 8, 2003. By contrast, Applicant notes that the present patent application was filed on January 8, 2002, before the publication date of the Spinelli et al. patent application. Applicant believes, therefore, that Spinelli et al. is disqualified as a reference for the purpose of 102(e)/103(a) under 35 U.S.C. 103(c). Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claim 37 of the present patent application insofar as it relies on the Spinelli et al. reference.

Allowable Subject Matter

Applicant acknowledges and thanks the Examiner for allowance of claims 1-18.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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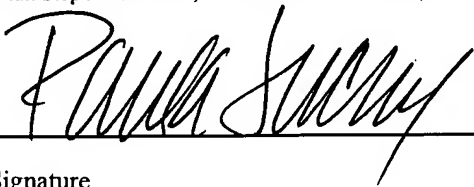
Date May 27, 2005

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of May, 2005.



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